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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 871

PHILIP W. PELTS, PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The District Court did not write an opinion (R. 40–45). The opinion of the Circuit Court of Appeals (R. 55–58) is reported in 123 F. (2d) p. 503.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on October 28, 1941 (R. 58–59). A petition for rehearing was denied on December 8, 1941 (R. 60). The petition for a writ of certiorari was filed January 16, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The Reconstruction Finance Corporation, as creditor of an Illinois state bank, obtained a judgment against a stockholder of record which has not yet been satisfied. The true and secret owner of the stock, however, was the petitioner herein. May a judgment be rendered against petitioner on the same liability with interest from the date of the original judgment?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Illinois Constitution and statutes are set forth in the Appendix, *infra*, p. 7.

STATEMENT

The facts, as found by the District Court (R. 40–44), may be summarized as follows:

The Reconstruction Finance Corporation, the respondent herein, was a creditor of the Central Republic Trust Company, an Illinois state bank that had defaulted upon its obligation. (R. 41.) On November 19, 1934, respondent brought suit against the stockholders of the bank to enforce their liability under the Illinois constitution and statutes. (R. 2–28.)

One Edith Levinson was the registered owner of twenty-four shares of stock and was made a defendant. (R. 42.) The true owner of those shares, however, at the critical dates was Philip W. Pelts, the petitioner herein, who procured the services of

a law firm to defend Edith Levinson in the suit. (R. 42.)

On May 1, 1937, a judgment was obtained against Edith Levinson in the amount of $2,400, which contained the following provisions (R. 43):

> In addition, this decree shall be without prejudice to any future hearing or proceeding in this cause, * * * against any or all persons who may be liable in any manner on account of shares of stock of said bank, * * * for the purpose of any such future hearing or proceeding in this cause this Court expressly retains jurisdiction of this cause.
>
> Plaintiff, with leave of this Court, may amend and supplement its bill of complaint or file such other pleadings in this cause as may be necessary, at any time hereafter, against any of the defendants in this cause or against any other persons referred to in this paragraph. * * *

Thereafter, shortly prior to December 13, 1938, the respondent first learned that Pelts was the secret owner of the twenty-four shares of stock. (R. 43.) Respondent then amended its original bill of complaint (R. 33) and filed a supplemental complaint (R. 34–36) in which it sought judgment against Pelts. The District Court entered a supplemental decree (R. 45) against Pelts in the amount of $2,400, together with interest from May 1, 1937, the date of the original judgment. The court below affirmed. (R. 55–59.)

ARGUMENT

The decision below is correct. It is not contrary to any Illinois decision, and there is no occasion for further review.

The Illinois courts have declared that the registered owners of Illinois state bank stock are liable to the bank's creditors (*Golden* v. *Cervenka,* 278 Ill. 409), and that the real owners of such stock are also liable, even though they are not owners of record. *Gahagan* v. *Whitney,* 359 Ill. 419; *Hood* v. *Commonwealth Trust & Savings Bank,* 376 Ill. 413. The precise question here involved has not been adjudicated by the Illinois courts, but the foregoing decisions indicate that when it is presented the judgment against the subsequently discovered true owner will be sustained, provided only that the creditor be limited to a single satisfaction.[1] A similar result has been reached with respect to the liability of national bank stockholders. *Ericson* v. *Slomer,* 94 F. (2d) 437 (C. C. A. 7th).

The Illinois cases holding that an election must be made between enforcing the liability of an agent and his undisclosed principal whose identity is revealed prior to judgment against the agent

[1] *Hospelhorn* v. *Poe*, 174 Md. 242, relied upon by petitioner (Pet. 7), not only involved the law of another state, but is wholly consistent with the result below. It did not hold that a creditor was powerless to proceed against the true owner who had been discovered after judgment against the record owner.

(Pet. 13–18), are obviously not in point. Here, petitioner's identity was not disclosed until after judgment had been entered against his nominee,[2] and in any event the liability of the true owner is not predicated upon an agency relationship between himself and the registered owner. *Gahagan* v. *Whitney*, 359 Ill. 419.

Petitioner's argument (Pet. 18–19) that the Circuit Court of Appeals failed to follow the Illinois law that the transfer of bank stock terminates the transferror's liability as to subsequently accruing debts of the bank ignores the fact, found by the District Court (R. 42), that petitioner continued to be the actual and beneficial owner of the stock after the transfer.

The contention (Pet. 19–21) that the allowance of interest is in conflict with Illinois law fails to take into account *Golden* v. *Cervenka*, 278 Ill. 409, 433, *Thompson* v. *Davis*, 297 Ill. 11, 21, and *Duncan* v. *Dazey*, 318 Ill. 500, 527, which hold that under Illinois law interest should be allowed where equitable considerations require its allowance. In this case petitioner attempted to retain the benefits of being a stockholder and to evade by subterfuge the liability attached by statute to such stockholders. In such circumstances the decision

[2] Since the relationship between Edith Levinson and Pelts was not discovered until after the original judgment, it is clear that the retention of the unsatisfied judgment against her is no bar to a judgment against petitioner. *Auto Parts Co.* v. *Roberts*, 194 Ill. App. 417, 424–427.

that equitable considerations required the allowance of interest against petitioner from the date of the original judgment is obviously correct.

CONCLUSION

The petition should be denied.

Respectfully submitted.

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FEBRUARY 1942.